Appointing an Executor for One's Islamic Last Will and Testament (Wasiyyah): A Guide for South Carolina Muslim Residents

In the Name of Allah, Most Gracious, Most Merciful.

APPOINTING AN EXECUTOR:

A South Carolina will may also be used to name an executor (al-wasi) to handle a testator's property and affairs from the time of their death until an estate is settled. Ideally, a testator should select an executor who is a young practicing Muslim; **preferably, their adult son or daughter**. An executor also may feel inclined to appoint their spouse or their best friend. However, at least one of the selected people should be outside of the family circle. This is so that if there is a family tragedy where members of the same family die together, at least someone else would be at hand to execute the will. A testator should also produce a letter to their executor that

generally explains what the job entails. What is more, a testator's will should leave detailed instructions for the executor, such as directives to pay all debts owed; especially, those debts owed to Allah; such as paying Zakat, feeding the poor to compensate for one's inability to fast, paying what remains of an unpaid Mahr (dowry), etc. The proof for this directive is the hadith of Bukhari, narrated by Aishah, wherein she quoted Allah's Messenger (P.B.U.H.) as saying, "**Whoever died owing fasts, his guardian should fast on his behalf**." Explicit details should also be applied to one's final illness, funeral, and burial expenses; i.e., that the expenses for the necessary funeral requirements, from the time of death until the completion of the burial, be drawn as a first charge from the estate in question.

It is also advantageous to select an Appropriate Executor and an Alternate Executor. For convenience purposes, these individuals should reside in the same state; because, it could become quite expensive for one's executor to travel back-and-forth to manage the estate in question. Moreover, some states require that out-of-state executors post a cash bond, even if this requirement has been waived in the will in question. The executor of a will is therefore, the manager of the estate appointed by a testator.

The executor has to carry out the wishes of a testator according to Islamic law regarding the interests of their children and estate. The authority of the executor should also be specified; i.e., **it should be stated that the executor may not deviate from Islamic law by modifying the inheritance guidelines outlined in the Quran, sunnah, and shariah. It should also be specified that despite living in a non-Muslim country, the executor shall carry out their duties as closely to Islamic law as legally possible for the state of South Carolina.**

If a Muslim dies with a valid Last Will and Testament, upon their death, their executor will need to apply for a grant of Letters of Probate, which is a legal document which states that one's executor is authorized to distribute the assets of a testator's estate in accordance with their Last Will and Testament. Once the will is probated, the document is authenticated with the probate court in the county wherein the deceased resided at the time of their death, and is held as valid in the eyes of the court. The executor then receives Letters Testamentary, a document that grants an executor access to the assets of the testator's estate and the authority to handle their affairs. What is more, if the executor wishes to get the Letters Testamentary issued without going to see an attorney, a copy of the valid Last Will and Testament and the

testator’s death certificate must be presented to the Court Clerk's office. The Clerk will then open a probate file for the estate of the deceased and the Letters Testamentary will be issued by the Court office. Once the Letters Testamentary has been issued, the executor should take it to the testator’s bank or other financial institution so that the funds held in a bank or investment account may be released. These documents, with the appropriate death certificate are often the only license an executor needs to marshal and dispose of the testator's estate in the name of the estate itself. It is also a good idea to make several copies of the documents and have them certified so that they can be presented to each institution.

The executor of a will is also responsible for locating and securing all the assets forming part of the testator’s estate. The testator’s beneficiaries must also be contacted. However, before any of the named beneficiaries can receive their inheritance, the executor must clear the testator’s debts. Therefore, the executor must notify the testator’s creditors and inform them that the testator has died; in addition to allowing them to make a claim for payment. With this being said, legal notices to creditors may need to be published, and any creditors wishing to make a claim against the estate shall be given a specific period of time to do so. The executor also pays any

estate taxes by authority of the Letters Testamentary. A final income tax return must also be prepared on behalf of the testator. The executor then arranges for the funds to be distributed to the estate's beneficiaries according to the instructions set out in the will. Lastly, it is advantageous that the executor acquire assistance from an attorney acting for the estate to efficiently perform their executor duties.

In instances wherein a deceased Muslim did not leave a Last Will and Testament, a qualified candidate would have to apply for a Letter of Probate to control the assets of the estate. But, in this case, it is a little more complicated. In the event this happens, one’s family members will need to reach an agreement and appoint an Administrator who must apply for the grant of Letters of Administration which is an instrument in writing, granted by the judge or officer having jurisdiction and power to granting such letters. Thus, Letters of Administration actually names an Administrator; thereby granting the individual in question full power to administer the goods, chattels, rights, and credits of the deceased in the county or district wherein said judge or officer has jurisdiction. Moreover, Letters of Administration also grants a newly appointed Administrator the authority to ask, collect, levy, recover, and receive the credits of any kind that the deceased either owed or

was entitled. As a result, the Administrator would be required to pay the debts in which the deceased stood indebted, pertaining to goods, chattels, rights, and credits according to the rate and order of law.

It is also important to note that one can also have a Last Will and Testament with Letters of Administration if none of the persons named as executor in the Last Will and Testament is able or willing to serve. In which case, the Court appoints an unnamed-in-the-Will Personal Representative and issues Letters of Administration with the Last Will and Testament Annexed. In view of these facts, every Muslim living in a non-Muslim land should take their chosen executor(s) and meet with a scholar at a local masjid/mosque in order to ensure that all parties (testator and executor) are thoroughly educated about their role and responsibilities.

Lastly, the executor should contact the Islamic scholar at the time of the testator’s death in order to consult with him in order to ensure that the estate in question is accurately divided. It is also important to note that if a Muslim testator fails to name an executor, the Probate Court will appoint someone to take on the job of winding up their estate. As a result, the Probate appointed representative probably might deviate from one’s directives of complying with Islamic law.

Hanafi and Maliki fiqh state that the executor should be trustworthy and truthful; the Shafii fiqh state that the executor must be just. The Hanafi fiqh considers the appointment of a non-Muslim executor to be valid. The testator may appoint more than one executor, male or female. The testator should also state wheter each executor can act independently of the other executor regarding the affairs of the Last Will and Testament in question.

A copy of an Overview of Estate Settlement in South Carolina by Albert C. Todd is listed below to provide the reader with further information pertaining to the subject at hand.

AN OVERVIEW OF ESTATE SETTLEMENT IN SOUTH CAROLINA

By: Albert C. Todd, III, Esquire
Columbia, South Carolina

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INTRODUCTION

This booklet is intended to give a brief overview of what settling an estate is all about. It is important for me to say up front that this is not a "How to Settle An Estate" guide.

The difficult decision at each turn is how much detail to include. I have tried to include enough specific information to be of genuine assistance and yet I have tried to urge caution and to identify the need for specific legal advice in those areas where it is necessary.

Over several years of estate planning and probate practice, one thing has become crystal clear to me--people are absolutely unique. Their estates reflect the uniqueness of the people who accumulated those estates. That God-intended uniqueness and the attempt to apply this very complex body of probate laws to solve people's problems is what has made the practice of law both challenging and rewarding. These unique problems require solutions which make broad general advice of little help in solving real-world problems. However, it is virtually impossible to successfully deal with the many frustrating details of estate settlement without seeing the big picture.

My hope and prayer is that the general rules set forth in this booklet will give a person faced with the chore of settling an estate a good overview of the probate and tax aspects of estate settlement. The details will only make sense if you can see where you are going and why.

Nothing in this booklet should be interpreted as my attempt to give legal advice that the reader should rely upon to solve a specific legal problem without getting the opinion of a qualified lawyer.

I want to thank Lois Weist, the probate court liaison of the Office of Court Administration of the S. C. Supreme Court, for her untiring encouragement and editorial assistance with the preparation of this booklet.

-- Albert C. Todd, III

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This publication is intended to provide accurate and authoritative general information in regard to the subject matter covered. By providing this brochure, Greenville County Probate Court is not undertaking to render legal or tax advice. If legal or tax advice is required, the services of a competent professional should be sought.

Helpful Contacts:

Ask-A-Lawyer	1-888-321-3644
Lawyers Referral Service	1-800-868-2284 (Statewide Toll Free)
Law Line - Taped Explanations of various legal issues	1-800-521-9788 (requires push button phone)
Social Security	1-800-772-1213
Veterans Affairs	1-800-827-1000
S. C. Department of Revenue & Taxation, Estate & Gift Section	1-800-763-1295
Federal Tax Information	1-800-829-1040

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PROBATE HANDBOOK

A NON-LAWYER'S OVERVIEW OF ESTATE SETTLEMENT IN SOUTH CAROLINA

In 1986, the South Carolina legislature passed a new body of law known as the South Carolina Probate Code. This new Probate Code is found in a new volume which was added to the South Carolina Code of Laws and is called "Title 62." This Code became effective on July 1, 1987, and is the current law which governs the settlement of estates.

The settlement of an estate can be generally summarized as four steps:

1. Probate the will or determine that the decedent died without a will and appoint a Personal Representative to administer the estate.
2. Determine what assets were owned by the decedent at death and appraise them.
3. Determine the decedent's debts and pay them; pay the income and estate and other expenses of administration according to the proper priority of payment.
4. Distribute the remaining assets to the rightful heirs or beneficiaries.

Collect the Assets:

> Real Estate
> Stocks & Bonds
> Cash
> Life Insurance
> Jointly Owned Property
> Personal & Household Effects, vehicles
> Property over which a power is held
!>Annuities

Pay:

> Proper Debts
> Estate Taxes
> Income Taxes
> Funeral Costs
> Personal Representative's fee (5%)
> Estate Attorney
> Accountant, Appraiser, etc.
> Probate Court Fees

Distribute:

All remaining assets as Will provides or by the laws of intestacy. For example:

> Personal effects - wife
> $1,500 - St. Martin's Church
> Residence - wife
> $500 - each grandchild
> $5,000 - each child
> Balance of all assets - wife

I. PROBATE COURT AND TAX OBLIGATIONS

In settling an estate, the Personal Representative has obligations and duties which fall into two broad categories:

A. **Probate Court Duties**. The Probate Court has jurisdiction over the settlement of all estates in South Carolina. Probate judges exist for each county and are elected officials who hire a staff to assist them with their duties. The Probate Court is usually located in the courthouse in each county.

Our new Probate Code provides for an informal method of estate settlement. This is designed to insure only minimal involvement of the Probate Court in situations where the beneficiaries and Personal Representative are in agreement concerning the settlement of the estate. A more formally supervised estate settlement procedure is available for those situations where the beneficiaries and Personal Representative do not agree on matters related to the estate or the beneficiaries simply want the Probate Court to closely supervise the settlement.

B. **Tax Obligations**. These duties are required by the Internal Revenue Service and the S. C. Department of Revenue & Taxation. The Personal Representative will have obligations to file income and estate tax returns depending upon the amount of income and the value of the assets of the estate, respectively.

It is not the Probate Court's duty to inform the Personal Representative of the extent or nature of their obligations to the tax authorities. It is important for the Personal Representative to seek qualified tax assistance in dealing with these tax obligations. (See Section 8 under Procedure Overview.)

II. HOW TO DETERMINE IF YOU NEED THE ASSISTANCE OF A LAWYER

Under South Carolina law, the Probate Court personnel are not allowed to give legal advice. In order to protect the public, South Carolina law allows only lawyers to give legal advice and to represent people before state courts. The following list may help you determine those situations in which it is wise to obtain legal advice.

1. **General Estate Settlement Supervision.** A lawyer's assistance can be very helpful in selecting and understanding the proper estate settlement process. With qualified legal advice, it is possible to avoid unnecessary delays and bewilderment trying to understand this complex body of law.
2. **Tax Obligations.** An attorney's assistance is helpful in making certain that income tax returns and state and federal estate tax returns are filed in a timely manner. Failure to properly file these returns can result in **personal liability** for the Personal Representative as well as penalties and interest.
3. **Interpretation of Laws or Provisions of the Will.** An attorney's assistance is often needed to determine what a will says. For example, there are situations in which lifetime gifts will take the place of gifts under the will. In addition, there may be questions concerning which beneficiaries must pay the estate taxes or administration expenses. It is also not unusual for a question to arise concerning who takes a bequest intended for a beneficiary who predeceased the Testator.
4. **General Estate Planning**. A qualified attorney can assist the beneficiaries

in determining whether the Personal Representative is properly administering the estate and how the provisions in the will which have been made for them will affect their own planning. For example, a wealthy beneficiary may want to consider a disclaimer, which is a refusal to inherit property. In addition, a will which establishes a trust may give the beneficiary a right to designate to whom the property will pass at their death.

5. **Before Qualifying As an Advisor to the Personal Representative.** The most important decision a named Personal Representative may have to make is whether or not to accept the job. While there is a 5% commission, the Personal Representative may want a lawyer=s assistance in determining whether or not the personal liabilities which are assumed are worth the fee that will be received.
6. **Omitted Spouse or Child.** There are certain provisions of the Probate Code which protect an omitted spouse and an omitted child. These laws give them an election to take a portion of the estate if they are inadequately provided for in the will. It is important that such person secure a lawyer=s assistance in properly filing a claim before the time expires and in evaluating the proposed settlement of that claim.
7. **Estate Creditor.** A creditor of the estate may want a lawyer's assistance improperly filing a claim. Failure to timely file a claim against an estate can result in the claim being **completely unenforceable.**
8. **Appeals.** If a person is dissatisfied with a decision made by the Probate Court, the decision may be appealed to the Circuit Court. The general rule is that a notice that you intend to appeal must be filed within 10 days in order to appeal a Probate Court decision. The grounds for the appeal must be filed within 45 days. As with any legal matter, this should be handled by a lawyer.

If you find that you need a lawyer's assistance, and in many cases a lawyer's help is necessary, Section VII, entitled "How to Find a Good Lawyer" will be helpful.

III. INFORMAL ESTATE SETTLEMENT - BASIC PRINCIPLES

1. **Duties and Liability.** State law provides that a Personal Representative (PR) owes the estate a standard of care similar to that required of Trustees. A PR is required to be impartial and to settle the estate as expeditiously and efficiently as can be done consistent with the best interest of the estate. Failure to properly perform the duties of estate settlement can result in personal liability of the Personal Representative.
2. **Immediately After Death.** In most cases the PR is not appointed until a few days after the date of death. Nevertheless, funeral arrangements and other duties frequently have to be undertaken which are in the best interest of the proper settlement of the estate. S. C. law specifically provides that the powers of the PR relate back to the date of death, giving those acts performed prior to the time that the probate court issues authority to the PR the same effect and validity as those performed after the appointment of the PR. In addition, the PR may approve and accept acts performed for the estate by other people and may reimburse them for the proper expenses thereof.
3. **How Property Passes at Death.** It is very important to understand the fundamental principal that **all property does not pass according to the terms of the will**. Property passing according to the terms of the will is generally called A**probate property**.@ Property passing in other ways is generally called A**non-probate property**.@

As a general rule, the PR only comes into possession of and only as authority over probate property.

The following diagram illustrates that some assets pass to a designated beneficiary, some pass because they are jointly owned with right of survivorship, and others are in the name of the decedent only and pass according to the terms of the will.

Asset	Passes to Wife	Passes to Estate
· Checking account in the name of: Al and Debbie Todd	1.	
· Savings Account: Al and Debbie Todd	1.	
· Common Stock Certificate: A.C. and D.M. Todd, JT TEN	1.	
· Bond: A.C. and D.M. Todd, Tenants in Common	2. one-half	2. one-half
· Common Stock Certificate: A.C. Todd		3.
· Residence: Albert C. And Deborah M. Todd	2. one-half	2. one-half
· Insurance: Beneficiary: Debbie Todd	4.	
· Group Life Insurance: Beneficiary--estate of insured		4.
· Lake House: A.C. Todd		3.
· Investment account: A.C. Todd		3.
· IRA: Beneficiary--Debbie Todd	4.	
· Car and boat: Albert C. Todd		3.
· Personal and household effects: Al Todd		3.

Key: **1.** jointly owned *with* right of survivorship
2. jointly owned *without* survivorship - wife=s half continues as her own, husband=s passes into his estate
3. individually owned asset
4. paid to designated beneficiary

For example:

A. Life insurance is payable to the beneficiary designated by the owner of the policy. Life insurance payable to a beneficiary obviously never comes into the PR=s hands. If life insurance is payable to the **estate**, it will come into the PR=s hands and will pass according to the terms of the Will.

B. A joint checking account, joint savings account or pay on death account will pass according to the terms of the account agreement with the bank, which generally will mean that the money in the account passes to the surviving joint depositor. It is possible to file a notice with the bank prior to death that the joint account will cease at death and the assets will pass according to the Will. It is also possible to specifically refer to the account and to direct in the will who gets the money in the account at death, but only if the money in the account belonged to the Testator.

C. IRAs, Keoghs and other employee benefit type arrangements generally pass to a designated beneficiary.

D. All the remaining assets in the Decedent=s name, such as savings accounts, stocks and bonds, real property, and personal and household effects generally pass according to the terms of the Will.

IV. INFORMAL ESTATE SETTLEMENT - PROCEDURE OVERVIEW

Since most estates will be administered under the informal estate settlement procedure, we will discuss the general procedure which will be followed.

1. **Immediately After Death**. As indicated earlier, there are many duties which should be properly attended to prior to the time that the Personal Representative goes to the Probate Court to assume the duties of office. These may include arranging for the funeral, purchasing a gravesite, locking up the home, making certain that the car and other assets are locked and secured, and generally taking care of those matters which must be performed immediately after death.

2. **Application For Informal Probate.** This requires the completion and submission of a probate court form which essentially asks the court to grant the PR the powers and authority necessary to settle the estate. The form can usually be obtained at a small or no charge from the probate court, and its completion may require the assistance of an attorney for those unfamiliar with the estate settlement process.

   The named PR may nominate another to serve with them or in their place. Since a very simple summary closing procedure is now available only if the PR and the beneficiary is the same person (or people), thought should be given to the possibility of having the identity of the PR(s) and beneficiary(ies) be the same.

   The form, #300PC, requires a significant amount of information concerning both the decedent and the beneficiaries and the answering of a multitude of questions concerning the Will. It must be signed by the applicant (usually the person applying to be PR) and notarized and should be taken to the probate court. A contract for funeral services or a death certificate may be used as proof of death. The original Will should be submitted with the application.

   As a general rule, the applicant for Personal Representative will sit down quite informally with someone in the probate court office who will review the application, the Will, and proof of death. They will then open the estate and the Probate Judge will sign the order giving authority to the Personal Representative to begin the estate settlement process.

3. **Information To Heirs and Devisees.** Form #305PC is mandatory for all estates and must be provided to the heirs and

devisees within 30 days of the granting of authority to the PR.

The purpose of the form is simply to notify those interested in the estate of the name, address and telephone number of the PR as well as the date that the PR was appointed and the Will informally probated. The PR will normally want to send a copy of the Will so that a person may read it for themselves.

4. **Notice to Creditors.** Most people have noticed the small printed estate notices which frequently appear in the newspaper. These appear in the paper because Form #370PC must be sent to a newspaper of general circulation directing the paper to file the notice. This notice must appear once a week for three successive weeks. The Personal Representative must in most cases see that the notice is sent to the newspaper, although in some counties the Probate Court will do this for the PR.

   It is advisable for the PR to send a notice (Form #376PC) to all of the known creditors of the decedent. After an actual notice, a creditor must file their claim before the later of 60 days from the mailing of the notice or 8 months from the date of the first publication of the newspaper notice.

   Claims of creditors not known to or reasonably ascertainable by the PR are barred if not filed within 8 months from the first notice published in the paper. Unless sooner barred under one of the other rules, all other claims against the estate are barred if not filed within one year of the date of death.

   For obvious reasons, it is a good idea to keep a copy of the newspaper in which the estate notice appears the first time.

5. **Inventory and Appraisement.** Form #350PC is required to be filed within 90 days of the appointment of a PR. Its purpose is to provide a summary of the assets of the estate. A copy must be filed with:
   1. each interested person who requests it,
   2. the Probate Court,
   3. the South Carolina Department of Revenue & Taxation (if the gross estate is greater than the applicable estate tax exemption--see paragraph 8 of this Section).

   In most counties, the Probate Court will itself mail a copy to the Department of Revenue & Taxation.

   Obviously, the reason that the South Carolina Department of Revenue & Taxation wants a copy of this return is to mark their calendars to expect to receive the S. C. estate tax return within nine months after the date of death. An inconsistency between the values of the assets indicated on this form and those indicated on the estate tax return will arouse the interest of (and require some explanation to) the Department of Revenue & Taxation.

   The use of professional appraisers is not required although in many cases it will be wise to spend the money necessary to hire qualified appraisers. Any interested person may apply to the Probate Court for the appointment of appraisers.

   The Court fee is based on the total value of real estate, stocks and bonds, mortgages, notes, cash, life insurance payable to the estate and miscellaneous property owned by the Decedent. Subject to certain minimum fees, the current fee is approximately 1/10th of 1% of this total.

   Form #350PC is substantially the same as the asset portion of the South Carolina estate tax return. Thus the completion of this form will be quite helpful in preparing the estate tax return.

   If because of the nature of the assets of the estate it is not possible to file the inventory and appraisement within 90 days, it is possible, using Form #352PC, to request the Probate Court to grant an extension of additional time.

6. **Estate Checking Account.** It is normally a good idea to open an estate checking account titled AEstate of (decedent), by (name), Personal Representative@. Having an estate account to deposit receipts into and

to write checks out of will be quite helpful in preparing the accounting which is required to be filed before the PR can be discharged.

7. **Payment of Claims.** The South Carolina Probate Code provides very specific methods by which claims of creditors are received, prioritized and paid.
   It is very important that the PR not pay claims which are not properly filed or which are not filed in a timely fashion. Claims which are not filed within the appropriate claim filing period (see paragraph 4) should not be paid unless the PR is completely satisfied of their legality and propriety. The assistance of a qualified attorney is frequently necessary to insure that no improper claims are paid, and as well that no proper debts go unpaid.
   A creditor should file a notice of claim on Form #371PC with the Probate **and** the PR. Generally, claimants filing some other form either with the PR or Probate Court are sent this particular form for filing.
   After evaluating those claims which are properly filed, the PR should notify each creditor concerning whether the PR will pay or disallow their claim. There are special forms (#372PC and #373PC) to be used regarding allowance and disallowance of claims. It is the responsibility of the PR to notify a claimant if a claim is disallowed and to warn the claimant that their disallowed claim will be barred if action is not taken within 30 days.
   If a claim is disallowed, the creditor has 30 days from the mailing of the notice of disallowance in which to file Form #373PC which is a Petition for the allowance of a claim against the estate.

8. **Tax payments.** A South Carolina estate tax return is required if the value of the gross estate exceeds these amounts:

   Date of Death:

prior to 6/30/88	$120,000
7/1/88 to 6/30/89	$140,000
7/1/89 to 6/30/90	$170,000
7/1/90 - 6/30/91	$320,000
7/1/91 & thereafter	- No separate S. C. estate tax.

   A federal estate tax return is required if the value of the gross estate exceeds:

1991-1997	$600,000
1998	$625,000
1999	$650,000
2000-2001	$675,000
2002-2003	$1,000,000
2004-2005	$1,500,000
2006-2007	$2,000,000
2008-2009	$3,500,000

   Note that this refers to the **gross** value of the assets--that is, without deducting mortgages, debts, or administrative expenses.
   Both estate tax returns are due nine months after the date of death and a check for the amount of the taxes should accompany the returns. It is the PR=s duty to file the estate tax return. Failure to do so can result in both penalties and interest, which may be charged to the PR individually if there is not a good reason for the failure to timely file the return and pay the taxes.
   In most cases, it is wise to have a qualified attorney help prepare the estate tax return.
   Both South Carolina and federal fiduciary (estate) income tax returns are required to be filed if the estate earns more than $600 of income. The estate=s income tax year can be determined by the PR but cannot run longer than 11 whole months beginning the next whole month after death. The fiduciary income tax returns must be filed three months and fifteen days after the end of the estate=s income tax year.

9. **Closing the Estate - Regular Closing Procedure.** After the time for claims has expired, the PR should begin the process of closing the estate. This process must begin at one of the following times:
   1. If the estate is non-taxable, within one year from date of first publication of Notice to Creditors
   2. If the estate is taxable, within 90 days after receipt of the S. C. Tax closing letter.
   3. Within the time period set by the court

in granting an extension of time to close the estate (Form #352PC).

The PR must prepare several different forms to close the estate.

A. **Final Accounting**. A final accounting of how the assets of the estate have been received and disbursed must be filed. It is important that accurate records are kept so that this accounting will be clear and exact. One of three forms may be used, #360PC, #361PC or #362PC.

B. **Proposal for Distribution.** Form #410PC is called a proposal for distribution. On it the PR lists the names of the beneficiaries of the estate and the amount or items that have been and/or will be distributed to each. This form should be submitted to the Probate Court along with the final accounting.

C. **Copies to Interested Parties.** A proof of delivery, Form #120PC, should be filed by the PR to assure the Probate Court that copies of the accounting and the proposed schedule of distribution have been sent to all of the proposed beneficiaries of the estate **and** all of the creditors of the estate whose claims are not paid or barred from payment. A party has a right to object to the proposed distribution for 30 days after the mailing of the proposed distribution schedule to them.

D. **Petition for Settlement**. Form #412PC is filed with the Probate Court and essentially asks the court to approve the distribution of the assets, approve the accounting and discharge the Personal Representative.

E. **Receipts.** There are several different forms of receipts which the beneficiaries may sign indicating that they have received a distribution. As a general rule, a deed of distribution, Form#400PC, would be used by the PR for a distribution of real property. This form appears to be particularly useful for the distribution of real property, as the law requires the PR to file a legal description of real estate with the Probate Court. Some Probate Courts will require the PR to submit three copies of the deed of distribution of real property as well as the $10 cost of filing a deed with the Clerk of Court=s Office where other deeds are filed. Other Courts simply ask to receive the recorded copy of the deed of distribution.

F. **Termination of Appointment.** All interested persons who get the notice that the PR has petitioned to close the estate have, for thirty days from the court filing that all interested parties have been notified, the right to ask the Court to have a hearing. At the hearing the Probate Judge will listen to any complaints about the proposed settlement. If thirty days passes and no one asks for a hearing and the Court is satisfied that the PR has satisfactorily completed the duties of estate settlement, it will issue an order terminating the appointment of the PR.

G. **Certificate of Discharge.** After the court has approved and terminated the appointment of the PR, the PR may ask the court for a certificate which may be used to terminate the bond which was required from the PR.

10. **Closing the Estate - Small Estate Procedure.** If the inventory and appraisement shows that, after paying debts, funeral expenses, administrative expenses, and other liens, the total is less than $10,000, then a special closing statement, Form #421PC, may be used to simply distribute and close the estate record. One year later, provided no one objects, the PR is automatically discharged.

11. **Closing the Estate - Summary Closing Procedure.** If the PR is also the only beneficiary or there are several PRs and they are the only beneficiaries, then a special Ashort-cut@ procedure is available. Closing the estate in these circumstances only requires the filing of a summary estate closing statement, Form #421PC. One year later, provided no one objects, the PR is automatically discharged.

This new simplified procedure should be of genuine help in many estates.

V . HEIRS WHEN THERE IS NO WILL

When there is no will (dying Aintestate@) or when none of the people named in the Will survive the decedent, the people who inherit are set forth in a law called the law of descent and distribution. All the property that would have passed under the Will passes instead to the people this law specifies. It is, in effect, the legislature=s best guess as to what your Will would have said if you had written one.

Here are a few examples:

If you die survived by a spouse: the spouse gets everything ... unless there were children also. If spouse and one or more children survive, the spouse gets half and children get (and divide) half.

If no spouse survives: and children survive, it goes all to children. If no children survive, then it goes all to mother and father or the one of them who survives. If no mother or father survive then it goes to brothers and sisters equally.

As a general rule: If a child doesn=t survive you but leaves their own children (your grandchildren) who do survive you, they (your grandchildren) take the share your child would have taken had your child survived you. A similar rule applies to a brother or sister who does not survive you, allowing a deceased brother or sister=s children to take the share their parent would have taken had they survived.

Other applications of these rules become very complex and require legal assistance.

VI. CRITICAL DATES LIST

1. Date of Death _____
2. Date of Appointment (of Personal Representative) _____
3. Date of First Publication to Creditors _____
4. Notification to heirs, devisees, etc.
   (within 30 days of appointment of PR) _____
5. Inventory & Appraisement (date of appointment + 90 days) _____
6. Date of Filing Personal Income Tax Return
   (April 15th year after death) _____
7. Expiration date for Creditor=s Claims
   (date of first publication + 8 months) _____
8. Date of Filing an Accounting & Proposal for Distribution, and Petition for Settlement (within one year from date of first publication or 90 days from receipt of S. C. estate tax closing letter) _____
9. Termination of Appointment (date No. 8 + 30 days) _____
10. Alternate estate tax valuation date
    (date of death + six months) _____
11. U.S. & S.C. Estate Tax Returns
    (date of death + nine months) _____
12. Tax Year End of Estate _____
13. File S.C. & Federal Fiduciary Income tax returns
    (3-1/2 months from estate=s tax year end) _____

VII. HOW TO FIND A GOOD LAWYER

Lawyers, like doctors, are becoming specialists. The complex nature of our current body of probate tax laws makes it almost a requirement that lawyers specialize.

In South Carolina, lawyers who specialize in estate planning and probate law and who meet certain requirements can be designated as **certified specialists**. There are approximately two dozen lawyers who are certified as specialists in Estate Planning and Probate Law in South Carolina. A list of those certified as specialists may be obtained from the Commission on Continuing Lawyer Competence of the South Carolina Supreme Court. Their address and telephone number is as follows:

The Supreme Court of S.C.
Commission on Continuing
Lawyer Competence
P. O. Box 2138
Columbia, SC 29202
(803) 799-5578

Word of mouth is often a good way to find expert help. Ask other lawyers, bank trust officers, etc., what lawyers in your area practice regularly in the estate planning and probate field. You may then want to interview two or three of the lawyers to determine whom you feel most comfortable working with. Most lawyers will not charge for the initial interview if you are there for the purpose of determining if you care to work with them and are not asking for specific legal advice. When you call the lawyer=s office to set an appointment, ask to make certain that there will be no charge for the initial interview.

Many local libraries have copies of the **Martindale-Hubbel Law Directory**. This volume of books contains background information on lawyers in each state as well as their age and names of schools they have attended. This book also rates lawyers on legal expertise and ethical standards. The highest rating in both categories is Aav@ and these ratings are generally reliable.

It is important for you to properly prepare for your first interview with the lawyer. Do not feel awkward at all asking the lawyer questions concerning his or her expertise in the field of estate planning and probate law. Do not hesitate to ask direct questions concerning fees.

Ask the lawyer whether he or some other person in his office will be working with you. If other people in the office such as other lawyers or paralegals will be working with you, ask what their hourly rates are.

When you have determined which lawyer you feel most comfortable working with, it is best to get a written fee arrangement.

VIII. GLOSSARY OF COMMON TERMS

(We Had To Have a Little Fun Somewhere)

1. **Beneficiary** - A person who benefits or receives from an estate or trust. It is generally a good idea to either be or marry one of these.
2. **Bond** - An insurance type policy in which the insurance company agrees to reimburse the beneficiaries if the PR steals from or loses assets of the estate.
3. **Child** - The blood offspring of a parent. This excludes a step-child, a foster child or a grandchild. The law consistently treats an adopted person the same as a blood offspring.
4. **Codicil** - An amendment to a will. Executed with the same formalities (two witnesses) as a Will. If you don=t be nice to grandma, she can cut you out of her Will with one of these.
5. **Devise** - When used as a noun, a devise is a gift of real or personal property under a Will. It is good to get one of these.
6. **Devisee** - The person who receives a gift under a Will. It is good to be one of these.
7. **Decedent** - The person who died.
8. **Distributee** - A person who receives property distributed to them by the Personal Representative who is settling an estate. It is good to be one of these - even better to be one of these if you don=t have to pay the estate taxes on what you get.
9. **Estate** - The general word for referring to the property of the decedent. The property owned by a trust is sometimes called the Trust Estate.
10. **Exempt Property** - The term generally used to refer to the $5,000 worth of personal and household effects which are exempt from the claims of the creditors and pass to the spouse, if they survive, or if none to the children.
11. **Fiduciary** -A person acting in a position of trust. Both a Trustee and a Personal Representative are considered fiduciaries. It is important to have one of these that you can count on absolutely. Bottom line - if you don=t trust >em, don=t name >em.
12. **Formal Proceeding** - In a formal proceeding in the Probate Court, a notice is sent to all the parties prior to a hearing. The hearing is a hearing held before the Probate Judge. You should wear a coat and tie or your Sunday dress and take a lawyer with you when you go to one of these.
13. **Heirs** - Those people (spouse, children, etc.) who get your estate if you die without a Will.
14. **Informal Probate** - The procedure normally used without notices and formal hearings for the settlement of an estate. This is the least expensive way to do it when everybody trusts everybody else.
15. **Issue** - A multi-generational term that includes all of a person=s lineal descendants - that is, children, grandchildren, great-grandchildren, etc. The more issue you have, the more stuff you get on Mother=s or Father=s Day.
16. **Minor** - A person in South Carolina under the age of eighteen. Older minors are sometimes referred to as Ateenagers@, but often they are referred to in somewhat more irreverent terms.
17. **Mortgage** - An agreement given to a lender which says they can come take your house if you don=t make the payments.
18. **Personal Representative** - The new word for the person who used to be known as the Executor or Administrator. The one who settles the estate. It is best to get good legal advice **before** you undertake to perform this job. It is also a good idea to get good legal advice to make sure you don=t get sued while or after you are doing this job.
19. **Petition** - This is in the nature of a request to the court to do something that you want them to do. After the Probate Judge looks at your request, they will either have a hearing or dispense with the hearing and write an Order that tells you what their decision is.

20. **Intestate** - This means dying without a Will. Dying without a Will is a basic estate planning no-no and deprives you of the privilege of making all the important decisions concerning who gets your stuff.
21. **Testate** - This means dying with a Will - the opposite of AIntestate@. Dying testate is the preferred method.
22. **Testator** - The deceased person who wrote the Will.
23. **Testy** - How your beneficiaries will act toward each other if you don=t do proper estate planning before you die.

IX. PROCEDURES FOLLOWED BY FINANCIAL INSTITUTIONS WHEN A SAFE DEPOSIT BOX HOLDER DIES

(information courtesy of Wachovia Bank)

When an individual who rents a safe deposit box dies, financial institutions must follow certain procedures determined by law to protect the property of the deceased. Listed here are the actions that typically take place.

The safe deposit box is sealed by the institution. No one is allowed sole access to the box.

Certain relatives may search the box for a will, insurance papers, or deed to a burial plot. The relative must offer positive identification as a qualifying relative of the deceased and search the box in the presence of a bank officer and another employee. A statement is signed by all present that states exactly what took place on this occasion.

If a will is found, it may be given only to the personal representative named in the will. A receipt for the will is obtained by the vault attendant.

If insurance policies on the life of the deceased are found, they may be given only to the beneficiary or beneficiaries named on the policy. A receipt for the policy is obtained by the vault attendant.

Any paper that appears to be a deed to a burial plot or that gives burial instructions may be given to any relative who is eligible to search the box and chooses to handle the burial. A receipt for the papers or deed is obtained by the vault attendant.

No other items may be removed from the safe deposit box at the time of the initial search.

After obtaining the proper Probate Court documentation, the personal representative may enter the box and inventory the contents in the presence of a bank officer or vault attendant.

The documentation required for this search is a Certificate of Appointment as Personal Representative.

This inventory must be itemized in detail, including the opening of all bound packages, even if they are marked property of someone other than the deceased.

The inventory is then signed by the Personal Representative and the bank employee in the presence of a notary public. The notary public must sign also. It is then sent to the South Carolina Department of Revenue & Taxation with a request for a waiver.

Nothing other than the items listed above may be removed from the safe deposit box until a tax waiver has been received from the South Carolina Department of Revenue & Taxation or a ten-day period has elapsed since the Department of Revenue & Taxation was notified and no objections have been made.

Once a waiver has been received the contents of the box may be removed by the personal representative and the box closed, or the box may be placed in the name of the personal representative.

INSTRUCTIONS FOR AN EXECUTOR:

For those Muslims living in non-Muslim lands, in order to avoid having one's body desecrated by un-Islamic funeral practices such as cremation, embalming, etc., one must specify how their body is to be handled; such as: Who is to and who cannot prepare a Muslim's body for janaza. One must ensure that the rights of their descendents/ascendants are not violated by conducting an extravagant funeral. (the deceased should be buried in the most inexpensive manner possible; i.e., not borrowing money for funeral expenses in order to purchase extravagant fabrics for shrouding the body, or even a casket, unless the use of a casket is required by the state - county where the deceased resided/will be buried.

Emphasis should also be placed on locating an Islamic cemetery or green cemeteries if one does not have access to a masjid (mosque-Islamic center). Instructions should be left as to where the body is to be buried; especially, if one is a recent convert and is not a member of a community, or lives in an area where Muslim cemeteries are not available. Therefore, in instances where Muslim cemeteries are not available one should purchase a parcel of land for the purpose of burial or pursue the next best option within their means (Allah puts no more on a soul than what it can bear).

An executor must also ensure that a basic grave marker is positioned over the testator's preferred choice of grave (**No tombstones or erected shrines, etc.**). It is also recommended that a testator leave instructions for their executor to invite those non-Muslims present at the Janaza to Islam and reiterate: "The shahadah (declaration of faith to become a Muslim or personal testimony that there is no God but Allah, who is one - totally unique from his creation, and that Mohammed the son of Abdullah and Aminah, born in Mecca Saudi Arabia in the 6th century, is the last of Allah's prophets and messengers, who brought the universal message of tawheed - oneness of Allah – and to only worship Allah); then proceed with the next item on one's list of Islamic obligations; namely, to learning how to make salat (ritualistic worship/prayer), to pay zakat (alms giving to poor Muslims once one has acquired the neesab by solely possessing wealth equivalent to the value of 85 grams of gold for one whole Islamic lunar year); fasting during the Islamic month of Ramadan from sunrise to sunset (breaking one's fast with a sip of water or a date; and paying zakatul fitra at the conclusion of the month of Ramadan prior to the Eid-ul-fitra prayer to purify one's fast); and lastly, making hajj (the pilgrimage to Mecca once in one's life for those who can afford it).

In order to eliminate confusion, especially for one living in a non-Muslim land, it might be beneficial to make a video to accompany the written will in order to reiterate the instructions specified within the will; i.e., video record one's final will and testament (say what is written while being video recorded in the company of the required witnesses). Utilizing modern technology, some Muslims prefer to read their will in front of a video camera. Basically, this course of action supplements the written copy of the will. Therefore, it is advised that one read their entire will in front of the video camera. Fundamentally, the video simply documents the will signing ceremony so that a doubting party can witness the testator signing the will in the presence of their witnesses; in addition to watching the testator's selected witnesses signing the will. One should also utilize the video to provide explanations about how various provisions of the will should be interpreted, to explain the meaning of certain words and phrases, to explain one's reasoning for issuing specific gifts to certain beneficiaries, etc.

In the event of a dispute among family members, the video in question makes it extremely difficult for an opposing party to contest the written will; for the video proves that the testator was mentally competent, the will was properly signed,

and that the testator’s intent was clear. Furthermore, if one decides to videotape their will, it is imperative that they sign the written will in the presence of the required witnesses as if there was no video camera present. In South Carolina, the written version of the will is able to stand on its own; because other versions are deemed invalid.